

JOURNAL OF THE HOUSE.

Tuesday, May 18, 2004.

Met at nine minutes after eleven o'clock A.M., with Mr. DiMasi of Boston in the Chair (having been appointed by the Speaker, under authority conferred by Rule 5, to perform the duties of the Chair).

Prayer was offered by the Reverend Robert F. Quinn, C.S.P., Chaplain of the House, as follows:

Prayer.

Eternal God, we take this moment to reflect, think and pray for Your assistance and guidance. We are grateful for the various gifts and talents which You have given us. Teach us to utilize these blessings wisely as we carry out our personal and legislative responsibilities. In these uneasy times, inspire us to be principled leaders with high ideals, relevant goals, coherent values and a deep concern for the needs of people, from the youngest child to the oldest adult. In addressing and resolving issues and policies in our diverse society, help us to be open to the insights and experiences of others in our daily discussions, but to remain committed to our own philosophical, political and religious principles.

Grant Your blessings to the Speaker, the members and employees of this House and their families. Amen.

Pledge of
allegiance.

At the request of the Chair (Mr. DiMasi), the members, guests and employees joined with him in reciting the pledge of allegiance to the flag.

Statement Concerning Representative Gomes of Harwich.

A statement of Mr. Jones of North Reading concerning Mrs. Gomes of Harwich was spread upon the records of the House, as follows:

Mr. SPEAKER: I would like to call to the attention of the House the fact that one of our colleagues, Representative Gomes of Harwich, will not be present in the House Chamber for today's sitting due to a death in her family. Any roll calls that she may miss today will be due entirely to the reason stated.

Statement
concerning
Representative
Gomes of
Harwich.

Statement Concerning Representative Kaprielian of Watertown.

A statement of Mr. DiMasi of Boston concerning Mrs. Kaprielian of Watertown was spread upon the records of the House, as follows:

Mr. SPEAKER: I would like to call to the attention of the House the fact that one of our colleagues, Representative Kaprielian of Watertown, will not be present in the House Chamber for today's sitting due to medical reasons. Any roll calls that she may miss today will be due entirely to the reason stated.

Statement
concerning
Representative
Kaprielian of
Watertown.

Statement Concerning Representative O'Flaherty of Chelsea.

A statement of Mr. DiMasi of Boston concerning Mr. O'Flaherty of Chelsea was spread upon the records of the House, as follows:

Mr. SPEAKER: I would like to call to the attention of the House the fact that one of our colleagues, Representative O'Flaherty of Chelsea, will not be present in the House Chamber for today's sitting due to a

Statement
concerning
Representative
O'Flaherty of
Chelsea.

long-standing family obligation outside of the country. Any roll calls that he may miss today will be due entirely to the reason stated.

Statement Concerning Representative Reinstein of Revere.

A statement of Mr. DiMasi of Boston concerning Miss Reinstein of Revere was spread upon the records of the House, as follows:

Mr. SPEAKER: I would like to call to the attention of the House the fact that one of our colleagues, Representative Reinstein of Revere, will not be present in the House Chamber for today's sitting due to a previously scheduled commitment. Any roll calls that she may miss today will be due entirely to the reason stated.

Statement Concerning Representative Travis of Rehoboth.

A statement of Mr. DiMasi of Boston concerning Mr. Travis of Rehoboth was spread upon the records of the House, as follows:

Mr. SPEAKER: I would like to call to the attention of the House the fact that one of our colleagues, Representative Travis of Rehoboth, will not be present in the House Chamber for today's sitting due to pre-planned trip outside of the country. Any roll calls that he may miss today will be due entirely to the reason stated.

Resolutions.

The following resolutions (filed with the Clerk) were referred, under Rule 85, to the committee on Rules:

Resolutions (filed by Mrs. Canavan of Brockton) congratulating Akinseye Akinbulumo on receiving the Eagle Award of the Boy Scouts of America;

Resolutions (filed by Mrs. Canavan of Brockton) congratulating Joseph Paul Gaskell on receiving the Eagle Award of the Boy Scouts of America;

Resolutions (filed by Mrs. Paulsen of Belmont) congratulating Mary and Joseph Harrington on the occasion of their fifty-fifth wedding anniversary; and

Resolutions (filed by Ms. Wolf of Cambridge) honoring Robert P. "Bob" Moses;

Mr. Scaccia of Boston, for the committee on Rules, reported, in each instance, that the resolutions ought to be adopted. Under suspension of the rules, in each instance, on motion of Ms. Wolf, the resolutions (reported by the committee on Bills in the Third Reading to be correctly drawn) were considered forthwith; and they were adopted.

Papers from the Senate.

A Bill relocating certain harbor lines in the Fairhaven and New Bedford harbors (Senate, No. 2170) (on a petition), passed to be engrossed by the Senate, was read; and it was referred, under Rule 7A, to the committee on Steering, Policy and Scheduling.

A report of the committee on Local Affairs and Regional Government, asking to be discharged from further consideration of the petition (accompanied by bill, Senate, No. 2332) of James N. Thivierge

for legislation relative to municipal finance, and recommending that the same be referred to the Senate committee on Ways and Means,—accepted by the Senate, was considered forthwith, under Rule 42; and it was accepted, in concurrence, inasmuch as relates to the discharge of the committee.

Reports of Committees.

By Mr. Scaccia of Boston, for the committee on Rules, asking to be discharged from further consideration of the Bill making certain corrective changes in the General Laws (House, No. 24, changed),—and recommending that the same be recommitted to the committee on Insurance. Under Rule 42, the report was considered forthwith; and it was accepted.

By Mr. Rogers of Norwood, for the committee on Ways and Means, that the Bill establishing a sick leave bank for a certain employee of the Department of Mental Retardation (Senate, No. 2336, amended) ought to pass. Referred, under Rule 7A, to the committee on Steering, Policy and Scheduling.

Mr. Kujawski of Webster, for said committee, reported that the matter be scheduled for consideration by the House.

Under suspension of the rules, on motion of Mr. Sullivan of Fall River, the bill was read a second and (having been reported by the committee on Bills in the Third Reading to be correctly drawn) a third time forthwith; and it was passed to be engrossed, in concurrence.

By Mr. Vallee of Franklin, for the committee on Criminal Justice, on House, No. 4571, an Order relative to authorizing the committee on Criminal Justice to make an investigation and study of a certain House document concerning the theft of motor fuel (House, No. 4739).

By Ms. St. Fleur of Boston, for the committee on Education, Arts and Humanities, on Senate, Nos. 227, 230, 242, 289, 292, 294, 327, 340 and 2080 and House, Nos. 1259, 1261, 1452, 1649, 1844, 2029, 2397, 2407, 2584, 3318, 3834, 3991, 4125, 4205, 4258, 4259 and 4542, an Order relative to authorizing the committee on Education, Arts and Humanities to make an investigation and study of certain Senate and House documents concerning regional schools, teacher certification, special education and student records and other related matters (House, No. 4740).

Severally referred, under Joint Rule 29, to the committees on Rules of the two branches, acting concurrently.

Subsequently Mr. Scaccia of Boston, for said committees, reported, in each instance, asking to be discharged from further consideration of the orders; and recommending that the same severally be referred to the House committee on Rules.

Under Rule 42, the reports severally were considered forthwith; and they were accepted.

By Mrs. Owens-Hicks of Boston, for the committee on Local Affairs and Regional Government on the part of the House, that the Bill relative to educational collaboratives (House, No. 4641) ought to pass. Referred, under Rule 33, to the committee on Ways and Means.

Insurance laws.
Sally Iannire, sick leave bank.
Education, study.
Educational collaboratives.

Statement concerning Representative Reinstein of Revere.
Statement concerning Representative Travis of Rehoboth.
Akinseye Akinbulumo.
Joseph Paul Gaskell.
Mary and Joseph Harrington.
Robert P. Moses.
Fairhaven and New Bedford, harbor lines.
Municipal finance.

Disability
retirement.

By Mr. Koczera of New Bedford, for the committee on Public Service, on House, No. 4670, a Bill relative to the annual adjustment of pensions and retirement allowances payable to persons receiving disability retirement allowances (House, No. 4741). Read; and referred, under Rule 33, to the committee on Ways and Means.

Food
products.

By Mr. Scaccia of Boston, for the committee on Rules, that the Bill relative to the sale of food products (House, No. 862) ought to pass. Referred, under Rule 7A, to the committee on Steering, Policy and Scheduling.

Swanssea,
liquor
license.

By Mr. Bosley of North Adams, for the committee on Government Regulations, on House, No. 4680, a Bill authorizing the town of Swanssea to issue an additional license for the sale of all alcoholic beverages not to be drunk on the premises (House, No. 4742) [Local Approval Received]. Read; and referred, under Rule 7A, to the committee on Steering, Policy and Scheduling.

Greenfield,
liquor
license.

By Mr. Bosley of North Adams, for the committee on Government Regulations, on House, No. 4695, a Bill authorizing the town of Greenfield to issue an additional license for the sale of all alcoholic beverages not to be drunk on the premises (House, No. 4743) [Local Approval Received]. Read; and referred, under Rule 7A, to the committee on Steering, Policy and Scheduling.

Mr. Kujawski of Webster, for said committee, reported that the matter be scheduled for consideration by the House; and, under said rule, it was placed in the Orders of the Day for the next sitting for a second reading.

Summary
judgement,
personal
property.

By Mr. Kujawski of Webster, for the committee on Steering, Policy and Scheduling, that the Bill concerning storage of personal property upon execution of a summary process judgement (House, No. 2100) be scheduled for consideration by the House.
Placed in the Orders of the Day for the next sitting for a second reading, with the amendment previously recommended by the committee on Ways and Means pending.

By Mr. Kujawski of Webster, for the committee on Steering, Policy and Scheduling, that the following matters be scheduled for consideration by the House:

The Senate Bill relative to the Massachusetts Credit Union Share Insurance Corporation (Senate, No. 2267, amended); and
House bills

Employees,
Berkton,
Lawrence,
Bill
DeFusco.

Relative to the privacy of municipal employees (House, No. 1325);
Authorizing the town of Easton to pay a certain unpaid bill (House, No. 4498) [Local Approval Received]; and
Providing that Emil DeFusco may continue employment with the police department of the city of Lawrence (House, No. 4682) [Local Approval Received];
Severally placed in the Orders of the Day for the next sitting for a second reading.

Emergency Measures.

The engrossed Bill establishing a sick leave bank for a certain employee of the Department of Mental Retardation (see Senate, No. 2336, amended), having been certified by the Clerk to be rightly and truly prepared for final passage, was considered, the question being on adopting the emergency preamble.

A separate vote was taken, as required by the provisions of Article XLVIII (as amended by Article LXVII) of the Amendments to the Constitution; and the preamble was adopted, by a vote of 74 to 0. Sent to the Senate for concurrence.

Convention
centers,
bonds.

The engrossed Bill relative to the terms of certain bonds to be issued by the Commonwealth (see House bill printed in House, No. 4285), having been certified by the Clerk to be rightly and truly prepared for final passage, was considered, the question being on adopting the emergency preamble.

A separate vote was taken, as required by the provisions of Article XLVIII (as amended by Article LXVII) of the Amendments to the Constitution; and the preamble was adopted, by a vote of 6 to 0. Sent to the Senate for concurrence.

Engrossed Bill.

The engrossed Bill exempting members of the police force of the town of Hopedale from the civil service law (see House, No. 4309, amended) (which originated in the House) (which had been returned by His Excellency the Governor with recommendation of amendment), having been certified by the Clerk to be rightly and truly prepared for final passage, was passed to be re-enacted, in its amended form; and it was signed by the acting Speaker and sent to the Senate.

Bill
re-enacted.

Orders of the Day.

Senate bills

Relative to credit union boards of directors (Senate, No. 13); and
Authorizing the town of Maynard to grant an easement over certain conservation land (printed in Senate, No. 2169, amended);

Third
reading
bills.

Severally reported by the committee on Bills in the Third Reading to be correctly drawn, were read a third time; and they were passed to be engrossed, in concurrence.

House bills

Relative to the Winchendon District Court (House, No. 2638);
Establishing a sick leave bank for Kevin J. Welch, an employee of the Trial Court (House, No. 2994); and
Providing for an animal control commission in the town of Lancaster (House, No. 3879);

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Severally reported by the committee on Bills in the Third Reading to be correctly drawn, were read a third time; and they were passed to be engrossed. Severally sent to the Senate for concurrence.

Second
reading
bills.

Senate bills

Authorizing certain utility rights-of-way in the town of Tewksbury (Senate, No. 2070);

Relative to the Development and Industrial Commission of the town of Oxford (Senate, No. 2188); and

Relative to part-time elected officials of the town of Swansea (printed as House, No. 3969); and

House bills

Relative to the licensing and supervision of financing companies by the Division of Banks (House, No. 15);

Relative to the signing of death certificates (House, No. 349);

Relative to credit union deposits (House, No. 483); and

Relative to the fees of justices of the peace for performing marriages (House, No. 929);

Relative to certain retirements in the city of Holyoke (House, No. 4391);

Validating the actions taken at the special town election held by the town of New Salem (printed in House, No. 4515);

For the protection of natural resources authorizing the town of Sandwich to convey, and the Department of Conservation and Recreation, Division of State Parks and Recreation to acquire, a conservation restriction in and to lands of the town of Sandwich (House, No. 4597); and

Further regulating motor vehicle insurance (House, No. 4656);

Severally were read a second time; and they were ordered to a third reading.

Recess.

Pending the question on acceptance of the report, the petition was recommended, on motion of Mr. Rodrigues of Westport.

At twenty-five minutes before twelve o'clock noon, on motion of Ms. Wolf of Cambridge (Mr. DiMasi of Boston being in the Chair), the House recessed until the hour of one o'clock P.M.; and at twenty-five minutes after two o'clock the House was called to order with Mr. DiMasi in the Chair.

The House Bill relative to municipal lighting plant cooperatives (House, No. 2425), reported by the committee on Bills in the Third Reading to be correctly drawn, was read a third time; and it was passed to be engrossed. Sent to the Senate for concurrence.

Municipal
lighting
plant
cooperatives.

The House Bill relative to initiative and referendum petitions in cities (House, No. 4654) was read a second time; and it was ordered to a third reading.

Cities,
referendums.

Engrossed Bills — Land Takings.

The engrossed Bill authorizing the town of Southwick to grant an easement to Carol K. Collins (see Senate, No. 1940) (which originated in the Senate), having been certified by the Clerk to be rightly and truly prepared for final passage, was put upon its final passage.

Southwick,
grant
easement.

On the question on passing the bill to be enacted, the sense of the House was taken by yeas and nays (this being a bill providing for the taking of land or other easements used for conservation purposes, etc., as defined by Article XCVII of the Amendments to the Constitution); and on the roll call 150 members voted in the affirmative and 0 in the negative.

Bill enacted
(land taking),
yea and nay
No. 632.

[See Yea and Nay No. 632 in Supplement.]

Therefore the bill was passed to be enacted; and it was signed by the acting Speaker and sent to the Senate.

The engrossed Bill authorizing the town of Braintree to transfer a certain parcel of town park land (see House, No. 4129) (which originated in the House) (which had been returned by His Excellency the Governor with recommendation of amendment), having been certified by the Clerk to be rightly and truly prepared for final passage, was put upon its final passage.

Braintree,
park
land.

Bill re-enacted
(land taking),
yea and nay
No. 633.

On the question on passing the bill to be re-enacted, the sense of the House was taken by yeas and nays (this being a bill providing for the taking of land or other easements used for conservation purposes, etc., as defined by Article XCVII of the Amendments to the Constitution); and on the roll call 150 members voted in the affirmative and 0 in the negative.

[See Yea and Nay No. 633 in Supplement.]

Therefore the bill was passed to be re-enacted, without amendment, and it was signed by the acting Speaker and sent to the Senate.

House
reports.

House reports

Of the committee on Election Laws, ought NOT to pass, on the petition (accompanied by bill, House, No. 885) of Frank M. Hynes and Robert L. Hedlund for legislation to regulate voting in local elections by property owners with a principal residence in a different municipality; and

Of the committee on Taxation, ought NOT to pass, on the petition (accompanied by bill, House, No. 1028) of Frank M. Hynes and another that the Department of Revenue be prohibited from collecting child support payments in certain cases;

Of the same committee, ought NOT to pass, on the petition (accompanied by bill, House, No. 1230) of Byron Rushing and other members of the General Court relative to the taxation of cooperative housing; and

Of the same committee, ought NOT to pass, on the petition (accompanied by bill, House, No. 1967) of J. James Marzilli, Jr., Frank I. Smizik, Patricia D. Jehlen and Elizabeth A. Malia for legislation to eliminate the investment tax credit;

Severally were accepted.

Part-time
and
contingent
work.

The House report of the committee on Commerce and Labor, ought NOT to pass, on the recommended petition (accompanied by bill, House, No. 2385) of Patricia D. Jehlen and other members of the General Court relative to the wages and benefits provided part-time employees, was considered.

Orders of the Day.

Supplemental appropriations, Attorney assignment correct.

Section 16 contained in the engrossed Bill making appropriations for the fiscal year 2004 to provide for supplementing certain existing appropriations and for certain other activities and projects (see House, No. 4330), which had returned by His Excellency the Governor with his objections thereto in writing (for message, see House, No. 4365), was considered.

Attorney assignment correct section 16 strands, yea and nay No. 634.

On the question on passing said section, notwithstanding the objections of His Excellency the Governor, the sense of the House was determined by yeas and nays, as required by Chapter I, Section I, Article II of the Constitution; and on the roll call 130 members voted in the affirmative and 20 in the negative.

[See Yea and Nay No. 634 in Supplement.]

Therefore section 16 was passed, notwithstanding the objections of the Governor (more than two-thirds of the members present and voting having voted in the affirmative). Sent to the Senate for its action.

Supplemental appropriations, Martha's vineyard health plan.

Section 120 contained in the engrossed Bill making appropriations for the fiscal year 2004 to provide for supplementing certain existing appropriations and for certain other activities and projects (see House, No. 4330), which had returned by His Excellency the Governor with his objections thereto in writing (for message, see House, No. 4365), was considered.

Martha's vineyard health plan section 120 strands, yea and nay No. 635.

On the question on passing said section, notwithstanding the objections of His Excellency the Governor, the sense of the House was determined by yeas and nays, as required by Chapter I, Section I, Article II of the Constitution; and on the roll call 129 members voted in the affirmative and 21 in the negative.

[See Yea and Nay No. 635 in Supplement.]

Therefore section 120 was passed, notwithstanding the objections of the Governor (more than two-thirds of the members present and voting having voted in the affirmative). Sent to the Senate for its action.

Salisbury, Appellate Tax Board.

The engrossed Bill authorizing the town of Salisbury to make an appeal to the Appellate Tax Board (see House, No. 4296), which had returned by His Excellency the Governor with his objections thereto in writing (for message, see House, No. 4644), was considered.

Bill passed over veto, yea and nay No. 636.

On the question on passing said bill, notwithstanding the objections of His Excellency the Governor, the sense of the House was determined by yeas and nays, as required by Chapter I, Section I, Article II of the Constitution; and on the roll call 129 members voted in the affirmative and 20 in the negative.

[See Yea and Nay No. 636 in Supplement.]

Therefore the bill was passed, notwithstanding the objections of the Governor (more than two-thirds of the members present and voting having voted in the affirmative). Sent to the Senate for its action.

Engrossed Bill — Land Taking.

The engrossed Bill authorizing the town of Maynard to grant an easement over certain conservation land (see Senate bill printed in Senate, No. 2169, amended) (which originated in the Senate), having

been certified by the Clerk to be rightly and truly prepared for final passage, was put upon its final passage.

On the question on passing the bill to be enacted, the sense of the House was taken by yeas and nays (this being a bill providing for the taking of land or other easements used for conservation purposes, etc., as defined by Article XCVII of the Amendments to the Constitution); and on the roll call 150 members voted in the affirmative and 0 in the negative.

[See Yea and Nay No. 637 in Supplement.]

Therefore the bill was passed to be enacted; and it was signed by the acting Speaker and sent to the Senate.

Engrossed Bill.

The engrossed Bill relative to credit union boards of directors (see Senate, No. 13) (which originated in the Senate), having been certified by the Clerk to be rightly and truly prepared for final passage, was passed to be enacted; and it was signed by the acting Speaker and sent to the Senate.

Orders of the Day.

Section 49 contained in the engrossed Bill making appropriations for the fiscal year 2004 to provide for supplementing certain existing appropriations and for certain other activities and projects (see House, No. 4330), which had returned by His Excellency the Governor with his objections thereto in writing (for message, see House, No. 4365), was considered.

After debate on the question on passing said section, notwithstanding the objections of His Excellency the Governor, the sense of the House was determined by yeas and nays, as required by Chapter I, Section I, Article II of the Constitution; and on the roll call 130 members voted in the affirmative and 20 in the negative.

[See Yea and Nay No. 638 in Supplement.]

Therefore section 49 was passed, notwithstanding the objections of the Governor (more than two-thirds of the members present and voting having voted in the affirmative). Sent to the Senate for its action.

The House Bill to clarify certain tax provisions and improve the activities of the Department of Revenue (House, No. 4728) was read a second time.

The amendment previously recommended by the committee on Ways and Means, — that the bill be amended by adding at the end thereof the following four sections:

“SECTION 80. Section 53 of chapter 62C of the General Laws, is hereby amended by adding at the end thereof: —

(e) With respect to a levy on securities, or a levy on shares of a mutual fund other than a money market mutual fund, the person or entity may sell or repurchase such securities or shares in the ordinary and usual course of investing, but may not receive funds resulting from such sale, for a time period of up to 45 days. If during such time period the commissioner has not rescinded the levy, extended the time period, or notified the person or entity in possession of such

Bill enacted (land taking), yea and nay No. 637.

Bill enacted.

Supplemental appropriations, payroll deductions.

Payroll deductions section 49 strands, yea and nay No. 638.

Department of Revenue.

Maynard, easement.

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securities or shares to remit funds, at the end of such time period such person shall forthwith liquidate sufficient securities or shares to satisfy the full amount of the lien and remit the liquidated funds to the commissioner.

SECTION 81. Section 4 of chapter 62E of the General Laws is hereby amended by inserting after the words 'safe deposit companies,' in the first sentence of subsection (e), the following words:— any mutual fund..

SECTION 82. Section 4 of said chapter 62E, as so appearing, is hereby further amended by inserting after the words 'time deposit account,' in the third sentence of subsection (e), the following words:— brokerage account, mutual fund account..

SECTION 83. Section 5 of said chapter 62E, as so appearing, is further amended by inserting after the words 'national banking associations,' in the second sentence, the following words:— mutual funds, brokers.,"— was adopted.

The bill (House, No. 4728, amended) then was ordered to a third reading.

Subsequently, under suspension of the rules, on motion of Mr. Casey of Winchester, the bill (having been reported by the committee on Bills in the Third Reading to be correctly drawn) was read a third time, its title having been changed by said committee to read: "An Act further regulating the Department of Revenue."

After debate on the question on passing the bill, as amended, to be engrossed, Mr. Larkin of Pittsfield moved that it be amended by inserting before section 67 (as printed) the following section:

"SECTION 65B. Section 1 of chapter 64G of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by inserting after the 'forty' in line 15 the following words:— or any building which contains more than 32 accommodations and which serves primarily as the temporary abode for persons who have their residences elsewhere, and there is a fixed rate per accommodation, and where said building is held open to the public through publications or other marketing means."

The amendment was adopted.

Mr. Demakis of Boston then moved that the bill be amended in section 79 (as printed), in line 00, by striking out the following date: "April 15, 2005" and inserting in place thereof the following date: "March 15, 2005"; and the amendment was adopted.

The same member then moved that the bill be amended in section 79 (as printed), in line 00, by inserting after the word "reporting," the following sentence: "The Commission shall conduct three public hearings in different municipalities in the Commonwealth."; and the amendment was adopted.

Mr. Marzilli of Arlington then moved that the bill be amended by striking out section 65 (as printed) and inserting in place thereof the following section:

"SECTION 64. Notwithstanding any general or special law to the contrary, there shall be granted a refundable credit during the 2004 tax year in an amount equal to any additional personal income tax due on 2002 capital gains solely as a result of the provisions of section 64 of this act."

The amendment was adopted.

Mr. Larkin of Pittsfield then moved that the bill be amended in section 42 (as printed), in line 00, by inserting after the word "market" the following: ", bond as defined in and issued pursuant to chapter 23G"; and the amendment was adopted.

Mr. Petrolati of Ludlow being in the Chair,— Messrs. Bradley of Hingham and LeDuc of Marlborough moved that the bill be amended by inserting after 65B (inserted by amendment) the following section:

"SECTION 65C. Notwithstanding any general or special law to the contrary, the commissioner of revenue is required to report to the joint committees on Taxation and Commerce and Labor on the revenue and economic impacts of the changes to Chapter 64G of the General Laws contained in sections 47 and 48 of this act."

The amendment was adopted.

Mr. Sullivan of Fall River then moved that the bill be amended by inserting after section 65C (inserted by amendment) the following section:

"SECTION 65D. Section 38 of chapter 63 is hereby amended by inserting after subsection (m) the following:—

(n) As used in this subsection, the following words shall, unless the context otherwise requires, have the following meaning:

'Adverse economic conditions,' six or more consecutive months in which total payroll employment in this commonwealth, as measured and defined by the Massachusetts Department of Labor and Workforce Development, declines.

'Base period employment level,' the number of qualified employees of the corporation in this commonwealth as of December 31, 2004, and the number of non-qualified employees of the corporation in this commonwealth as of December 31, 2004, determined separately. If the corporation was not engaged in business in the commonwealth on December 31, 2004, the base period employment level shall be the average employment level for the first two taxable years during which it is engaged in business in the commonwealth. In the event of the acquisition of a business or line of business or any other corporate restructuring that increases the number of qualified or non-qualified employees of the corporation in this commonwealth, the base period employment level to be applied in the taxable year in which the acquisition or restructuring occurs and in all subsequent taxable years shall be increased to reflect such an increase.

'Jobs commitment percentage,' except as provided in paragraph (2), one hundred percent.

'Non-qualified employee in the commonwealth,' an individual who: (i) is employed by a defense corporation, a manufacturing corporation, or a mutual fund service corporation; (ii) works on a full-time basis with a normal week of 30 or more hours; (iii) at the inception of the employment relationship does not have a termination date which is either a date certain or determined with reference to the completion of some specified scope of work; (iv) is eligible to receive employee benefits including, but not limited to, paid holidays, vacation and unemployment benefits; and (v) is subject to Massachusetts income tax withholding. Three or fewer individuals

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who collectively fulfill the requirement of clause (ii) and who each meet the requirements of clauses (i), (iii), (iv), and (v) shall be counted as one non-qualified employee for purposes of this section.

'Non-qualified employment level,' the number of non-qualified employees of the corporation in this commonwealth in the taxable year.

'Non-qualified jobs commitment level,' the base period employment level for non-qualified employees multiplied by the jobs commitment percentage in effect for the taxable year.

'Qualified employee in the commonwealth,' an individual who: (i) is employed by a defense corporation, a manufacturing corporation, or a mutual fund service corporation; (ii) works on a full-time basis with a normal week of 30 or more hours; (iii) at the inception of the employment relationship does not have a termination date which is either a date certain or determined with reference to the completion of some specified scope of work; (iv) is eligible to receive employee benefits including, but not limited to, paid holidays, vacation and unemployment benefits; (v) is subject to Massachusetts income tax withholding; (vi) in the case of an employee at a manufacturing corporation, is employed working in the manufacturing corporation's manufacturing operations; and (vii) is not working in a bona fide executive, administrative, or professional capacity under the provisions of 29 U.S.C. 213(a)(1). Three or fewer individuals who collectively fulfill the requirement of clause (i) and who each meet the requirements of clauses (i), (iii), (iv), (v), (vi), and (vii) shall be counted as one qualified employee for the purposes of this section.

'Qualified employment level,' the number of qualified employees of the corporation in this commonwealth in the taxable year.

'Qualified employment commitment level,' the base period employment level for qualified employees multiplied by the jobs commitment percentage in effect for the taxable year.

(1) Notwithstanding the preceding sections, if, for any taxable year beginning on or after January 1, 2005, a defense corporation as described in subsection (k), a manufacturing corporation as described in subsection (l), or a mutual fund service corporation to the extent of its mutual fund sales as described in subsection (m) does not have a qualified employment level that equals or exceeds its qualified jobs commitment level for the taxable year and a non-qualified employment level that equals or exceeds its non-qualified jobs commitment level for the taxable year, the corporation shall apportion its net taxable income to this commonwealth in accordance with subsection (c), unless adverse economic conditions have occurred in that taxable year.

(2) If adverse economic conditions occur in two or more consecutive taxable years beginning on or after January 1, 2005, a corporation's jobs commitment percentage for the first taxable year following the most recent year in which adverse economic conditions occurred shall be reduced by five percentage points for each taxable year in excess of one in which adverse economic conditions occurred. The jobs commitment percentage shall increase by five percentage points in each subsequent taxable year until it reaches one hundred percent.

(3) The commissioner of revenue shall promulgate regulations implementing the provisions of this subsection."

The amendment was rejected.

The bill (House, No. 4744, printed as amended) then was passed to be engrossed. Sent to the Senate for concurrence.

Order.

On motion of Mr. Finneran of Boston,—

Ordered, That when the House adjourns today, it adjourn to meet tomorrow at eleven o'clock A.M.

Next
Sitting.

Accordingly, without further consideration of the remaining matters in the Orders of the Day, at six minutes before five o'clock P.M., on motion of Mr. Tobin of Quincy (Mr. Petrolati of Ludlow being in the Chair), the House adjourned, to meet tomorrow at eleven o'clock A.M.